

UNITED STATES BANKRUPTCY COURT

LOCAL RULES



WESTERN DISTRICT OF TEXAS

December 2000

LOCAL COURT RULES
OF THE
UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF TEXAS

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ORDER IMPLEMENTING LOCAL COURT RULES

IT IS HEREBY ORDERED that the following shall constitute the Local Rules of the United States Bankruptcy Court for the Western District of Texas, effective December 1, 2000. The Judges of this Court hereby adopt these Local Bankruptcy Rules pursuant to Rule 9029 of the Bankruptcy Rules and under the authority of the United States District Court for the Western District of Texas, to be used in conjunction with the Bankruptcy Rules in all cases and proceedings under Title 11 of the United States Code, except as otherwise ordered by the presiding judge in a case or proceeding. All former Local Bankruptcy Rules and Standing Orders are hereby revoked and rescinded as of the effective date of these Local Bankruptcy Rules.

These Local Bankruptcy Rules may be amended or supplemented from time to time as may be necessary for the proper administration of justice.

IT IS SO ORDERED.

Dated this 17th day of October 2000.

SIGNED this 17th day of October 2000, by LARRY E. KELLY, CHIEF U. S. BANKRUPTCY JUDGE, LEIF M. CLARK, U. S. BANKRUPTCY JUDGE, RONALD B. KING, U. S. BANKRUPTCY JUDGE, and FRANK R. MONROE, U. S. BANKRUPTCY JUDGE.

**LOCAL COURT RULES
OF THE
UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF TEXAS**

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L. Rule 1001. TITLE; SCOPE OF RULES; ADOPTION OF CERTAIN LOCAL RULES OF THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TEXAS; ADMISSIONS PRO HAC VICE.

(a). Title

The Rules that follow are adopted as the Local Rules to govern procedure of the Bankruptcy Court until further order, and shall be cited as the "Bankruptcy Local Rules" or "L. Rule."

(b). Scope and Effective Date of Rules

1. These Rules supplement or, as permitted, modify the Federal Rules of Bankruptcy Procedure ("the Bankruptcy Rules"), and shall be construed consistently with those Rules and to promote the just, efficient and economical determination of every action and proceeding. These Rules are effective on December 1, 2000.
2. On Motion or on the Court's own initiative, a Judge may waive the provisions of these Rules in any case for the convenience of the parties in interest or in the interest of justice. The Appendix may be supplemented or modified from time to time.
3. These Rules shall govern all actions and proceedings pending or commenced after the effective date cited above.

(c). Adoption of Certain Local Rules of the United States District Court

The Local Rules of the United States District Court for the Western District of Texas shall not apply to any proceedings in the United States Bankruptcy Court, except as hereinafter adopted.

(d). Definitions

Except when a matter is pending before a District Court Judge, the references in the Local Rules of the United States District Court to "Court" and "Judge" shall be read as the "United States Bankruptcy Court" and "bankruptcy judge." Except where specifically designated as "U. S. Trustee," trustee means the trustee appointed in a Chapter 7, 11, 12 or 13 case.

The Local Rules of the United States District Court shall be referred to as "District Court Local Rules" when referred to in the Bankruptcy Local Rules.

(e). Admission Pro Hac Vice

1. An attorney not admitted to practice in the United States District Court for the Western District of Texas must request permission of the Bankruptcy Court to appear for or represent a party in a particular case or proceeding pending before the Court. The motion to be admitted *pro hac vice* shall be filed with the Clerk's Office in the division in which the particular case or proceeding is pending. The motion may be filed *ex parte* and shall include the following:
 - A. The attorney's (i) name, (ii) law firm, (iii) office address, office telephone number, fax number and email address, and (v) if applicable, relevant State Bar Number.
 - B. The names of the party or parties the attorney represents in the particular case or proceeding.
 - C. A list of the state and federal court(s) in which the attorney is currently admitted to practice, the date of each admission, and whether the attorney is or is not in good standing in each such court.
 - D. A statement that the attorney is eligible to practice in the Bankruptcy Court and agrees to familiarize him/herself with the Local Bankruptcy Court Rules.
 - E. A statement that the attorney is not currently suspended or disbarred in any other court, or a disclosure of any suspensions or disbarments.
 - F. A disclosure of any formal grievance procedures pending against the attorney, and the status of such proceedings.

- G. Either (i) a statement that the attorney has not requested admission *pro hac vice* in the Bankruptcy Court for the Western District of Texas in the preceding twelve months, or (ii) a list of motions for admission *pro hac vice* filed by the attorney with the Bankruptcy Court for the Western District of Texas in the preceding twelve months, which list shall include the title and case number of each case in which admission was sought, the date the motion was filed, and the disposition of such motion.

The attorney shall submit a proposed form of Order with the motion granting the admission for appearance in the captioned case, adversary or specifically referenced matter. The order shall contain the following statement: "This order shall not be considered admission to practice generally before this Court or the U.S. District Court for the Western District of Texas."

2. An attorney who has been admitted to practice pursuant to the provisions of this Rule shall promptly notify the Court of any change in status which would make applicant ineligible for membership in the Bar of this Court.
3. An attorney may not be admitted by the Bankruptcy Court to practice *pro hac vice* in this District in more than 3 cases in any twelve month period, without making application for admission to the U.S. District Court for the Western District of Texas.

(f). Reference

By standing order of the District Court, all cases under Title 11, and all proceedings and matters arising in, arising under or related to a case under Title 11 are referred to the Bankruptcy Court for this District. (See Appendix L-1001-f).

(g). Standards of Litigation Conduct

All counsel are expected to observe the standards of conduct set out in *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988).

(h). Standing Orders

Standing Orders of the Bankruptcy Court which apply to practice before and procedures in the Bankruptcy Court for this District, including procedures relating to Chapter 13 practices in the various divisions thereof. These Orders may be modified from time to time, and are available on PACER, at each divisional office, and at the court's website (www.txwb.uscourts.gov).

(i). ADR Provisions

The ADR provisions found at Appendix L-1001-i are adopted.

(j). Court's Website

The court's URL for its official website is <http://www.txwb.uscourts.gov>. The most current Local Rules, Appendix, Standing Orders and forms may be found at this website.

L. Rule 1002. COMMENCEMENT OF CASE.

All Debtors, other than individuals, must be represented by counsel as of the date of commencement of a case with regard to all pleadings and hearings (including the bankruptcy petition itself). Petitions filed *pro se* by entities other than individuals may be dismissed *sua sponte*.

L. Rule 1004. PARTNERSHIP PETITIONS.

If a partnership case is commenced by the filing of an involuntary petition by its partner(s) and an order for relief is entered by default, the petitioning partner(s) shall be responsible for timely filing the schedules and statements of affairs for the debtor entity. If schedules are not timely filed, the petition may be dismissed *sua sponte*.

L. Rule 1005. CAPTION OF PETITION.

In addition to the requirements of Bankruptcy Rule 1005, the caption of the petition and all other pleadings and papers accompanying the petition shall include the division in which it is filed (Austin, El Paso, Midland, San Antonio, or Waco) and a space for the Clerk to insert the case number. The caption shall also include under the space for the case number the Chapter of Title 11 under which the petition is being filed.

L. Rule 1007. LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS.

Creditor List

(a). General Requirements.

1. The master mailing creditor list shall include those agencies and offices of the United States required to receive notice in Bankruptcy Rule 2002. Addresses for proper notice to major United States Government agencies are indicated in Appendix L-1007-a-1.
2. Where a federal tax debt is owed, all lists shall include the address of the Internal Revenue Service office having responsibility for monitoring the case. Cases filed in the Midland/Odessa Division are the responsibility of the Dallas District Director. Cases filed in all other divisions, including Pecos, are the responsibility of the Austin District Director. The addresses for both offices are located in Appendix L-1007-a-1.

(b). Form of Creditor List.

The creditor list shall be in such form as prescribed by the Clerk of the Court.

L. Rule 1009. AMENDMENT OF VOLUNTARY PETITIONS, LISTS, SCHEDULES AND STATEMENTS, AND MASTER MAILING MATRICES.

(a). Required Service

Any amended petition, creditor list, list of 20 largest creditors, or amended or late-filed schedules or statements, or plan summaries shall be served by the party filing same on the parties listed in L. Rule 9013(g)(1) and as provided below.

(b). Notice to Newly Scheduled or Added Entities

Copies of amended or late-filed Schedules or Statements, or plan summaries shall be served, within three (3) days of filing, on each entity newly scheduled, ~~or~~ newly added, or newly affected. The entity filing same shall also attach a copy of the "Order For and Notice of § 341(a) Meeting," "Discharge of Debtor," "Order Confirming Plan," and "Order Fixing Date for Filing Claims" to the extent such orders have been entered in the case to date.

(c). Amendment of Creditor Lists

Whenever schedules or amendments add new entities or make corrections to the mailing addresses, the Debtor shall file with the document an amended creditor list which shall include only the names and addresses of the entities added, deleted or corrected.

(d). Notice of Amendment of Exemptions and Deadline for Objections

If Debtor's Schedule of Exemptions is amended, notice of such amendment shall be sent by the Debtor to all creditors. Objections to the amended schedule must be filed within 30 days from the date of service of such notice.

(e). Proofs of Service

Whenever notice of any amendment is required by this Rule, proof of service shall be filed. Local Rule 9013(f) governs the form of proof of service.

L. Rule 1010. SERVICE OF INVOLUNTARY PETITIONS AND SUMMONS.

Petitioner Responsible for Service

If service of the summons is not filed by the petitioning entity within the time allowed by Bankruptcy Rule 7004, the Court may dismiss the case *sua sponte*.

L. Rule 1014. DISMISSAL AND CHANGE OF VENUE

Upon motion by any party-in-interest or upon the Court's own motion, the Court may, for cause, transfer venue to another division within the District.

L. Rule 1015. CONSOLIDATION OR JOINT ADMINISTRATION OF CASES PENDING IN SAME COURT.

To request joint administration of two or more pending bankruptcy cases, a motion setting out the following shall be filed in each case:

1. the name and case number of each case sought to be jointly administered;
2. the proposed style and case number to be used on subsequent pleadings if joint administration is ordered;
3. a summary of any administrative or scheduling orders previously entered in the affected cases which may require modification; and
4. the need to propose amendments or consolidation of mailing lists in the affected cases for future noticing requirements.

L. Rule 1017. DISMISSAL OR CONVERSION OF THE CASE.

- (a). Any motion to dismiss or convert shall state whether the case has been previously converted from another chapter of title 11.
- (b). A motion to convert a case filed pursuant to section 1112(a) shall state whether (1) the debtor is a debtor in possession, (2) whether the case was commenced as an involuntary petition, and (3) whether the case was previously converted to chapter 11 other than on the debtor's request.

Comment: Fed.R.Bankr.P. 1017 expressly permits conversion of cases under chapters 12 and 13 by notice, without the requirement of a court order. Accordingly, the former local rule requiring motions for such conversions has been abrogated.

L. Rule 1019. CONVERSION OF CHAPTER 11 REORGANIZATION CASE, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE TO CHAPTER 7 LIQUIDATION CASE.

Within fifteen (15) days of the effective date of conversion, the Debtor shall file a supplemental schedule indicating any changes, by way of addition or deletion, to its creditor list, inventories, schedules, statements as may be applicable, or amend such items to reflect any changes, including but not limited to the inclusion of any property acquired or disposed of since the entry of the Order for Relief under the previous chapter. If no amendments are necessary, Debtor shall file a certificate to that effect within the fifteen (15) day period.

L. Rule 2002. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, UNITED STATES, AND UNITED STATES TRUSTEE.

Returned Notices

Notices of the first meeting of Creditors and Orders of Discharge which are undelivered shall be returned to the Debtor or Debtor's counsel. The Debtor shall be responsible for re-serving such notices and is responsible for attempting to determine the correct address for each returned notice. The Debtor shall file a certificate of service and provide the Clerk with any corrected address for the entities for whom notice was returned. If corrected addresses are unavailable, Debtor or counsel shall file a notice with the Clerk, who is then authorized to remove from the mailing list on file any such address.

L. Rule 2004. EXAMINATION.

(a). Inapplicable to Adversary Proceedings

The provisions for examination under Bankruptcy Rule 2004 shall be inapplicable to Adversary Proceedings.

(b). Notice

Not less than ten (10) days' written notice of a proposed examination shall be given to the entity to be examined, and its counsel. The entity to be examined shall have five (5) calendar days after receipt of the notice within which to respond or object to the proposed examination. The notice shall advise the entity to be examined of the scope of the examination and describe any documents requested.

(c). No Order Required

Unless a Motion to Quash is timely filed and served by a party in interest, the noticed examination shall be, by this Local Rule, deemed ordered by the Court. The Notice of Intent to Conduct Rule 2004 Examination need not be filed. Attendance and production of documentary evidence requested of an entity other than the debtor shall be in compliance with Bankruptcy Rule 9016.

(d). Motions to Quash

If an entity objects to the examination for any reason, it must file a motion to quash, and request a hearing on such motion prior to the scheduled date and time of the examination.

(e). Sanctions

If it appears that any entity or counsel has been unreasonable in seeking or in resisting discovery under Rule 2004, the Court may impose appropriate sanctions. The Court may condition the taking of any examination on such terms as are just.

L. Rule 2007.1. APPOINTMENT OF A TRUSTEE OR EXAMINER IN A CHAPTER 11 REORGANIZATION CASE

(a). If a request has been made for the election of a trustee in a chapter 11 case, pursuant to § 1104(b), the United States Trustee shall schedule a meeting for the purposes of the election.

(b). The party requesting the election shall be responsible for notice.

[Comment: Rule 2002(a)(1) requires at least 20 days notice of the § 1104(b) meeting and Rule 2002(a) requires notice be given to all creditors and indenture trustees.]

(c). A creditor may vote for a candidate for trustee in a Chapter 11 case only if such creditor would qualify for voting under 11 U.S.C. §702(a), or such creditor's claims have been temporarily allowed for purposes of voting.

(d). A copy of the United States Trustee's Report of Election will be sent to the party who requested the election. Any other party may request a copy of the Report by submitting the request in writing to the United States Trustee before the conclusion of

the election meeting. Notice of the filing of the United States Trustee's Report shall be given to all parties who voted in the election.

- (e). An application for approval of the election results or, in the event of a dispute, a report summarizing the election and any disputes regarding the validity thereof shall be filed within ten (10) days of the conclusion of the election.

L. Rule 2014. EMPLOYMENT OF PROFESSIONAL PERSONS.

(a). By Whom Application Made

An application to approve the employment of a professional person shall be made and signed by the entity seeking to employ that person.

(b). Content of Application

1. In addition to the information required by Bankruptcy Rule 2014, the application must also contain the following:
 - A. the date of the filing of the Petition, the chapter under which the Petition was filed, and (if applicable), the date the case was converted and the chapter under which the application is currently pending;
 - B. the mailing address, telephone number, fax number and email address (if available) of the professional person to be employed;
 - C. a disclosure of other persons in the same profession who are already or are also to be employed by the applicant, and an explanation of the reason an additional professional is required; and
 - D. the verified statement required by Bankruptcy Rule 2014.
2. An application to employ any professional shall have attached a copy of the Rule 2016(b) disclosure of compensation.

(c). Nunc Pro Tunc Application

An application filed within thirty (30) days of the professional's commencing services is deemed contemporaneous. Any later application is deemed nunc pro tunc and may be granted only for cause shown, and after notice and an opportunity for hearing.

(d). Procedure

An application to employ a professional person is a contested matter. The application or a summary of the application in the form of Appendix L-2014 must be served on entities pursuant to L.R. 9013(g). The application may be granted by the Court without hearing. A party-in-interest who opposes an application for retention may file an objection within twenty days of the date of service of the application summary, and such objection shall be set for hearing notwithstanding the court's order granting the application to retain.

(e). Notice of Entry of Order

Notice of entry of the order approving employment of the professional shall be sent by the Clerk.

Comment:

The new local Rule deletes those parts of former L. Rule 2014 which duplicated other rules or which were primarily advisory in nature. The Court may grant an application without hearing, and need not wait until the twenty days has run to see if objections are filed. However, if an objection is timely filed, the court has the authority to vacate, modify, annul, or amend the original order authorizing employment. By the same token, if the court desires to set the application on its own motion, notice of the setting will be sent to those entities reflected in the certificate of service accompanying the application. The rule should be read in such fashion as to permit the court or parties in the case to devise alternative billing and compensation schemes at the early stage of a case, including the use of budgets, status conferences, flat fee arrangements, contingent billing arrangements and the like.

L. Rule 2015. DUTY TO KEEP RECORDS, MAKE REPORTS, AND GIVE NOTICE OF CASE

(a). Maintenance and Disposition of Records

Unless otherwise ordered by the court on notice and hearing, a Debtor shall maintain all books and records until the entry of an order closing the case. A Trustee who is in possession of books and records of the Debtor may, on notice and hearing, destroy, abandon, store or return to the Debtor all or a portion of those books and records. Such notice shall include a detailed description of the books and records and the objection period language as provided in L. Rule 9014(b). Notice shall be given to the United States Attorney, the United States Trustee, and the Special Procedures Office for the Internal Revenue Service, in addition to those persons otherwise entitled to notice under L. Rule 9014.

COMMENT:

Both state and federal tax laws require that taxpayers maintain certain books and records to substantiate the positions taken with respect to tax liability. Tax authorities should be notified before a trustee destroys records that might be relevant to an estate's tax liability.

(b). Debtor's Duty to Report

1. In a Chapter 11 case, and in an operating Chapter 7 case, the debtor-in-possession or the trustee shall file a Monthly Operating Report, in the form prescribed by the United States Trustee. The Monthly Operating Report shall be filed on or before the 20th day of each month following the month the subject of the report, until a Plan is confirmed, or the case is converted or dismissed. A signed copy of the Monthly Operating Report shall be furnished to the United States Trustee.
2. Failure to file current accurate Monthly Operating Reports is cause for dismissal of a case.

L. Rule 2016. COMPENSATION OF PROFESSIONALS

(a). Form of Application

Unless otherwise ordered by the court, an application for compensation and reimbursement for a professional retained pursuant to court approval shall consist of

1. A Fee Application Summary in the form of Appendix L-2016-a-2; the Summary must include a summary description of the services rendered, by category, reflecting the total cost of each category of services and summarizing the nature and purpose of each category of services rendered, and the results obtained;
2. A Compensation Support Exhibit reflecting contemporaneous time records itemizing services rendered by category, in a format which reflects a description of each service entry, the amount of time spent rendering that service, the date the service was performed, who performed that service, and the hourly rate of the person performing that service.
3. A Reimbursement Support Exhibit, reflecting invoices, records and/or receipts for expenses incurred. The date, time, and amount of each expense shall be shown. Any single expense in excess of \$100.00 shall be supported by a receipt or invoice, except for in-house postage, telephone, and photocopying charges.

(b). Procedure for Applying for Compensation in Chapter 11 and Chapter 7 Cases

1. The Fee Application Summary must be served pursuant to L. Rule 9014 upon any secured creditor whose cash collateral is used by the estate (and such creditor's counsel), any committee appointed in the case (and such committee's counsel), the twenty largest unsecured creditors, any trustee appointed in the case (and such trustee's counsel), the debtor (and debtor's counsel), and the United States Trustee.
2. Any party in interest may obtain a copy of the Compensation Support Exhibit and Reimbursement Support Exhibit at no charge by requesting a copy of same from the professional seeking compensation.

3. In cases which have been jointly administered (other than Chapter 13 cases), a separate application must be filed for each estate in which services were performed, unless the Court orders otherwise. The applications shall disclose how services and charges have been allocated among the various estates.

(c). Procedure for Compensation in Chapter 13 Cases

1. The Chapter 13 Trustee shall review the attorney's fee charged in each case and shall make a recommendation concerning the reasonableness of the compensation requested. If the Court agrees with the Trustee's recommendation, then confirmation of the Chapter 13 Plan shall also constitute court approval of the fees requested. The Court may, on its own motion, set a hearing to review the attorney's fee requested, which hearing may be conducted at the same time as the confirmation hearing scheduled in the case.
2. No professional fee or fee of any petition preparer may be paid unless and until the Court filing fee is paid in full.
3. It is presumed that in the routine non-business chapter 13 case, the attorney's compensation will include the following legal services:
 - A. all conferences with Debtor;
 - B. preparation of Petition and Schedules;
 - C. attendance at § 341 First Meeting of Creditors;
 - D. attendance at Confirmation and Discharge hearings (including reset confirmation hearings); and
 - E. preparation of routine Motions (e.g., Motions for Moratorium of Plan Payments; Motions to Waive Pay Order; Motions to Pay Filing Fee in Installments; and Objections to Claims).
4. Attorneys in chapter 13 cases who claim additional fees for other services (such as motions for plan modifications, motions to incur debt, motions to sell property, and responses to motions for relief from stay) must file a Fee Application.

COMMENT:

The amendment to Rule 2016 seeks to introduce some flexibility into the compensation process, as alternative billing methodologies are explored by professionals and the Court. Retained are the summary, and the requirement for supporting exhibits. The new disclosure relies on a categorization of events in lieu of the formalistic twelve-factor pleading traditionally used in this District. Experience has shown the traditional pleading to be uninformative and therefore unhelpful in evaluating the reasonableness of a fee request.

In using categories, professionals should consult the categories of services proposed by the United States Trustee in its publications. However, professionals are not bound to adhere to those categories, nor are they limited by them. The intent of the rule is to encourage disclosure of services rendered and their value to the estate in a way easily evaluated by creditors and the Court.

L. Rule 9014 applies to all applications. Negative notice language employed on an application for compensation permits the Court to rule on the application without an actual hearing if no one has timely objected. The Court may elect to set a matter for hearing in any event even if no party has objected.

Nothing in the application for compensation procedure should be construed to restrict the court from employing other, alternative arrangements for compensation or for the regulation of professional costs in the case.

The new rule expressly recognizes the special needs of the Chapter 13 system and provides adaptability to the local legal cultures of divisions within this District. The judges responsible for each division may modify local procedures for compensation in Chapter 13 by standing order applicable only in the affected division.

L. Rule 3001. PROOF OF CLAIM; TRANSFERRED CLAIM.

The transferee shall serve a Notice of Transfer of Claims upon the debtor, debtor's attorney, the transferor, the United States Trustee, any trustee and/or any examiner and counsel for any trustee and/or examiner, counsel for any official committees, and all parties requesting notice. The Notice shall include a certificate of service as required under L. Rule 9013(f).

L. Rule 3002. FILING PROOF OF CLAIM OR INTEREST.

(a). Service of Claim

A copy of every Proof of Claim or Interest in all cases shall be served with any attachments on the Debtor's attorney (or on the Debtor, if the Debtor is *pro se*) and any trustee appointed in the case.

(b). Necessity for Filing

A secured creditor in Chapter 12 and Chapter 13 must file a proof of claim or interest for the claim or interest to be allowed.

(c). Bar Date for Filing Secured Claims in Chapter 12 and Chapter 13

A proof of claim by a secured creditor, other than a governmental agency, is timely filed if it is filed by the creditor not later than 90 days after the first date set for the meeting of creditors called under Section 341 of the Code, or, by the first date set for the confirmation of the debtor's plan, whichever is later, or, if it is filed in the name of the creditor by the trustee or the debtor, within the time allowed under Rule 3004 of the National Rules, or prior to the date first set for confirmation of the debtor's plan, whichever is later. Failure to timely file the secured claim shall be without prejudice, nevertheless, to the creditor's right to seek relief from the automatic stay under Section 362 or adequate protection payments under Section 363 of the Bankruptcy Code.

L. Rule 3003. TIME FOR FILING PROOF OF CLAIM OR EQUITY SECURITY INTEREST IN CHAPTER 9 MUNICIPALITY OR CHAPTER 11 REORGANIZATION CASE; CLAIMS PROCEDURE FOR ADMINISTRATIVE CLAIMS

(a). Bar Date for Proof of Claim or Interest in Notice of First Meeting

Proofs of claim or interests in Chapter 11 cases shall be filed by the date established in the Notice of the Meeting of Creditors pursuant to Section 341, unless the Court, upon motion and after notice and an opportunity for hearing, orders otherwise.

(b). Bar Dates for Administrative Claims in Chapter 9 or Chapter 11 Cases

The Court, after notice and an opportunity for hearing, may establish a bar date for filing an application for allowance and payment of an administrative claim, either on its own motion or on motion of a party in interest, filed pursuant to L. Rule 9014. Unless the Court for cause orders otherwise, the notice of the bar date shall afford all administrative claimants not less than 30 days to file administrative claims, and the bar date shall be a date prior to confirmation of any plan.

(c). Procedure for Filing Applications for Allowance and Payment of Administrative Claims in Chapter 11 Cases

An application for allowance and payment of an administrative claim shall be served with attachments on counsel for the Chapter 11 Debtor, upon any Committee and its counsel, upon any trustee or examiner appointed in the case, upon any party who has requested notice in the case, and upon the United States Trustee. The application shall include a certificate of service indicating compliance with L. Rule 9013(g).

(d). Allowance and Disallowance of Administrative Claims

The application may be made on negative notice as set forth in L. Rule 9014(b).

COMMENT: This rule is designed to fill in a gap in the national rules. Congress, in the legislative history to Section 503, indicated its expectation that rules would be adopted to implement that section, but they never were.

L. Rule 3007. OBJECTIONS TO CLAIM.

(a). Notice

Objections to claims are contested matters and may be made on negative notice as set forth in L. Rule 9014(b). If negative notice is not used or if a timely response to the objection is filed, a hearing on the objection will be set.

(b). Service

Objections to claims shall be served on the claimant and those parties listed in L. Rule 9013

L. Rule 3011. UNCLAIMED FUNDS IN CHAPTER 7 LIQUIDATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT, AND CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASES

(a). Procedure for Withdrawal of Unclaimed Funds .

An application for withdrawal of unclaimed funds shall contain the claimant's full name, address, telephone number, and social security number or employer identification number. Individual claimants not represented by an attorney must present photo identification or other appropriate positive identification credentials to the Clerk upon filing. Anyone filing an application on behalf of a claimant shall attach an original Power of Attorney showing the authority to represent the claimant in seeking disbursement of the unclaimed funds. Disbursement checks will always be made payable to the claimant only.

(b). Notice

All applications to disburse unclaimed funds shall contain a certificate of service showing that notice has been given to the United States Attorney pursuant to 28 U.S.C. §2042.

L. Rule 3012. VALUATION OF SECURITY.

(a). Contents of Motions

All motions for valuation must be accompanied by an affidavit which discloses:

1. the date of purchase and the purchase price of the item(s) sought to be valued;
2. a specific description and statement of condition of said item(s);
3. the movant's opinion of the fair market value of said item(s); and
4. the basis for said opinion of fair market value.

(b). Service

Motions shall be served pursuant to L. Rule 9013(g).

L. Rule 3015. CHAPTER 13 PLAN AND CONFIRMATION HEARINGS.

(a). Plan Summaries

Every Chapter 13 Plan shall be accompanied by a Plan Summary. Plan Summary Forms used in the various divisions are attached as Exhibits to the standing orders. Any amendment to the Plan must also be accompanied by an Amended Plan Summary.

(b). Timely Filing of Plan and Plan Summary

Bankruptcy Rule 3015 applies to the filing of both the Plan and the Plan Summary. If the Plan and Plan Summary are not timely filed the Court may summarily dismiss the case without further notice or hearing. A motion to extend the time for filing the Plan and Plan Summary must be filed before the expiration of the time for filing the Plan and Plan Summary.

(c). Notice

Unless provided otherwise by Standing Order, the Debtor shall serve a copy of the Plan Summary and any Amended Plan Summary on all creditors and all parties requesting notice. The Debtor shall serve the Chapter 13 Trustee with a copy of both the Plan and the Plan Summary, and any Amended Plans and Amended Plan Summaries.

(d). Motions to Waive Pay Order

A motion to waive the issuance of a pay order may be approved by the court without a hearing, provided the form of order reflects the Chapter 13 Trustee's approval. Motions to waive pay orders are not required to comply with the noticing requirements of L.R. 9014. In the alternative, the Chapter 13 Trustee may excuse the requirement of a pay order. In that event, the Chapter 13 Trustee shall so indicate in the § 341 proceeding memorandum.

(e). Objections to Confirmation and Attendance at Confirmation Hearings

1. **Objection to Confirmation.** The specific procedure for objecting to confirmation of a debtor's Chapter 13 Plan is contained in the materials included with the Notice of First Meeting of Creditors. Procedures may vary within the district by division and may be regulated by standing order or orders.
2. **Excused Attendance at Confirmation Hearings.**
 - A. Except as may otherwise be provided by the provisions of this Rule or by standing orders regulating chapter 13 practice in a particular division of the district, only the Court may excuse a debtor's attendance at the confirmation hearing.
 - B. If all of the following conditions are met, the debtor and the debtor's attorney are excused from attending the scheduled Chapter 13 Plan confirmation hearing:
 - (i) the plan and plan summary have been filed and summaries served in accordance with these Rules and with the requirements imposed by any applicable standing order affecting chapter 13 practice in the division in which the case is pending;
 - (ii) no party-in-interest has timely filed an objection in accordance with the procedures set out in these Rules and any applicable standing orders affecting chapter 13 practice in the division in which the case is pending; and
 - (iii) the Trustee has recommended confirmation.
 - C. If the debtor and debtor's attorney have been excused from attending the confirmation hearing, the court may enter the confirmation order submitted by the trustee without further hearing.

(f). Modification of Plan After Confirmation. Any modification to a plan shall be upon motion and subject to the provisions of L. Rule 9014 and the requirements imposed by any applicable standing order affecting chapter 13 practice in the division in which the case is pending;

(g). Requirement That All Delinquent Tax Returns Be Filed Prior to Confirmation

State and federal tax returns that are delinquent as of the Petition Date shall be filed by no later than five days before the §341 first meeting of creditors. The Trustee may refuse to recommend confirmation of any case in which such returns are delinquent.

(h). Discharge in Chapter 13 Cases

A request for hardship discharge is by motion filed pursuant to L. Rule 9014.

L. Rule 3017. CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT IN CHAPTER 11 CASES

Upon motion and cause shown, the Court may use FRBP 3017.1 to conditionally approve a disclosure statement in any Chapter 11 case.

COMMENT:

The 1994 amendments to the Code gave the Court the power under 11 U.S.C. §105(d)(2)(vi) to combine the hearing on approval of a disclosure statement with the hearing on confirmation. The new Federal Rules of Bankruptcy Procedure did not include a specific procedure to allow such a combination except in the case of small business debtors. This rule implements the statute, filling the gap left in the national rules.

L. Rule 3018. ACCEPTANCE OR REJECTION OF A PLAN IN CHAPTER 11 REORGANIZATION CASES.

(a). Voting

Except as provided by this Rule or Order of the Court, no ballots are to be filed with the Clerk of the Court. The notice which is required by Bankruptcy Rule 3017(d) shall direct that all ballots be submitted to the Plan Proponent at a specified mailing address.

(b). Ballot Summary

For all confirmation hearings the Plan Proponent must prepare a written ballot summary in substantially the same form as Appendix L-3018-b. In addition to indicating how each class and each entity voted, the original summary shall also have each original ballot attached. At the confirmation hearing the original ballot summary and one copy will be submitted to the Court for filing. The Plan Proponent shall make available upon request a copy of the ballot summary three (3) calendar days prior to the confirmation hearing to any party objecting to the confirmation of the Plan and to the proponent of any competing plan and its counsel.

L. Rule 3022. FINAL DECREE IN CHAPTER 11 CASES

Motions requesting the entry of a final decree in Chapter 11 cases may be filed using the negative notice language set forth in L. Rule 9014(b). Such motions must be served as required under L. Rule 9013. If no timely objection is filed, the Court may grant the motion and enter a final decree closing the case.

L. Rule 3024. SUSPENSION OF CHAPTER 13 PLAN PAYMENTS.

Motions for Suspension of Chapter 13 Plan Payments should not be filed. The Trustee shall have the authority to approve one suspension of plan payments, not to exceed three month's of plan payments. If the Trustee does not approve the suspension, the Debtor may then seek court approval by filing a motion with the Clerk.

The Chapter 13 Trustee shall have authority to grant one sixty (60) day moratorium, in the Trustee's discretion; no motion, notice or other Court approval shall be required, but the circumstances shall be documented in the Trustee's records. Further suspensions of Chapter 13 Plan Payments require motions, which must be submitted to the Chapter 13 Trustee for review before they are filed. The Motion shall indicate whether the Trustee approves the relief requested. Where the motion seeks a suspension of plan payments in excess of sixty (60) days, the debtor or his attorney shall serve the motion on all creditors and parties-in-interest.

L. Rule 3025. DISPOSITION OF FEDERAL INCOME TAX REFUNDS IN CHAPTER 13 CASES.

Any tax refund not necessary to pay tax obligations shall be first applied to cure any delinquency in the Chapter 13 plan, and the balance of the refund shall be remitted to the debtor. Therefore, with respect to all pending Chapter 13 bankruptcy cases:

- (a). the Internal Revenue Service is authorized to apply any tax refunds of debtors to the payment of any tax obligations due and owing by the debtors, regardless of whether such tax obligations or tax refunds arose before or after the filing of the case, so long as such tax claims are entitled to priority status under 11 U.S.C. § 507(a);
- (b). the terms “taxes” and “refunds” includes all penalties and interest associated with taxes and refunds; and
- (c). the Internal Revenue Service shall be entitled to charge its normal rate of interest and penalties for tax obligations arising after the filing of the Chapter 13 petition.

L. Rule 4001. RELIEF FROM AUTOMATIC STAY; PROHIBITING OR CONDITIONING USE, SALE OR LEASE OF PROPERTY; USE OF CASH COLLATERAL; OBTAINING CREDIT.

(a). Relief From Stay

1. Motion and Response: Contents

A. Motions

Motions seeking relief from automatic stay shall state the specific relief requested and the provision of §362(d) under which relief is sought. The motion shall state with specificity the facts that support the relief requested.

Motions for relief from stay shall not be combined with other forms of relief except those allowed by 11 U.S.C. §§ 362 and 1205. Movants wishing to waive the thirty (30) day hearing requirement of § 362(e) must include such waiver in the caption of the motion.

B. Form of Motion; Negative Notice

A movant may file a motion seeking relief from stay employing the following fifteen-day negative notice language:

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF SERVICE,
THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

If this negative notice language is used, the movant will be deemed to have waived entitlement to an initial hearing within 30 days. If negative notice language is not used, then the motion will be set within thirty (30) days of its filing, as provided in § 362(e), unless the movant waives the thirty day hearing requirement in the caption of the motion.

C. Responses

Any response, to be effective, must specifically contest one or more of the substantive grounds pled in support of the motion.

If negative notice language is not used, a response is not required.

D. Use of Affidavits

Pursuant to Rule 43(e) of the Federal Rules of Civil Procedure, a movant may use affidavits as evidence at the hearing in support of the factual allegations in the motion. The affidavits should not be filed with the Clerk, but must be served pursuant to L. Rule 9013(g) at the same time the motion is filed.

A respondent may also use affidavits as evidence at the hearing. The affidavits should not be filed with the Clerk, but must be served pursuant to L. Rule 9013(g) either (i) at the same time the response is filed, if one is required under this Rule or (ii) within 15 days of the date of service of the motion, if no response is required under this Rule.

The use of affidavits does not preclude the use of witnesses at the hearing.

2. **Hearings.**

A § 362(e) hearing on a motion for relief from automatic stay shall be consolidated with the § 362(d) final hearing unless the court, for cause, rules otherwise at the time of the hearing.

COMMENT: Section 362(e) gives courts the option of conducting preliminary hearings on stay motions, or of consolidating the preliminary hearing with the final hearing.

(b). Use of Cash Collateral: Obtaining Credit

1. **Motions for Interim Relief**

If the Debtor files an emergency motion for an order allowing the interim use of cash collateral pursuant to Bankruptcy Rule 4001(b), or to obtain credit pursuant to Bankruptcy Rule 4001(c) the Debtor shall present the following information in the motion:

- A. the names and addresses of all creditors holding or asserting an interest in the collateral, and their attorneys, if applicable;
- B. the efforts made to contact the affected creditors or their attorneys with regard to the motion;
- C. the nature of the emergency;
- D. the total dollar amount requested to be authorized; and
- E. a description of the adequate protection which will be provided to the creditor(s).

2. **Incurring Debt in a Chapter 13 Case.**

- A. Motion by a Debtor in a Chapter 13 Case to incur debt shall include the following information:
- D. the amount of debt sought to be incurred, and the reasons why the Debtor believes it necessary;
- E. the percentage to be paid to unsecured creditors under the plan before and after the proposed debt to be incurred; and
- C. a copy of the Debtor's Schedule I and J, before and after the debt incurrence.

The motion shall be served upon all creditors and parties in interest and may, upon a showing of need, be served on ten (10) days notice.

L. Rule 5011. WITHDRAWAL OF REFERENCE

(a). Filing

A motion to withdraw the reference and any responses thereto shall be filed under the style and number of the bankruptcy case or adversary proceeding in which reference is sought to be withdrawn and shall be filed with the Clerk of the Bankruptcy Court. The Clerk of the Bankruptcy Court will transmit the motion to withdraw the reference to the District Court.

(b). Contents of Motion

The motion shall list all pleadings which may be relevant to the Court's disposition of the motion, including docket entry numbers. The motion shall be accompanied by a form of order for entry by the District Court.

(c). Responses

Any response or objection to a motion for withdrawal of the reference shall be filed within ten (10) days of the date of service.

L. Rule 6004. USE, SALE OR LEASE OF PROPERTY

(a). Trustee Use of Estate Funds

A Chapter 7 Trustee may, without prior approval of the Court, pay from funds of the estate routine expenses for preservation of the estate, such as insurance premiums on property, locksmith charges, storage space rental, filing fees for adversary proceedings and other routine charges made by third parties. Expenses included within this provision do not include reimbursement of internal operating expenses of the Trustee. Payments made under this provision in each case shall not exceed an aggregate of one thousand dollars (\$1,000.00) in any twelve month period.

(b). Notice of Proposed Use, Sale or Lease of Property

Notice of a motion to use, sell or lease property shall contain the negative notice language set forth in L. Rule 9014(b). In addition to the requirements of Rule 2002(c)(1), the notice shall contain:

1. The name and address of the proposed buyer;
2. The proposed consideration to be received by the estate, including estimated costs of the sale or lease, including commissions, auctioneer's fees, costs of document preparation and recording and any other customary closing costs; and
3. A description of the estimated or possible tax consequences to the estate, if known, and how any tax liability generated by the use, sale or lease of such property will be paid.

(c). Motions in Chapter 12 and 13 Cases

In chapter 12 and chapter 13 cases, a Motion for proposed use, sale or lease of property shall indicate consent or lack of consent of the Trustee and of any affected secured creditor.

L. Rule 6008. REDEMPTION OF PROPERTY FROM LIEN OR SALE

(a). Contents of Motions

All motions seeking redemption of property under 11 U.S.C. § 722 must be accompanied by an affidavit of the debtor which discloses:

1. the date of purchase and the purchase price of the item(s) sought to be redeemed;
2. a specific description and statement of condition of said item(s);

3. the debtor's opinion of the fair market value of said item(s);
4. the basis for said opinion of fair market value; and
5. the last four (4) digits of the account number by which the creditor can identify the loan transaction.

(b). **Service.** Motions shall be served pursuant to L. Rule 9013(g).

L. Rule 7004. SUMMONS AND SERVICE.

Official Form AO440 ("Summons in a Civil Action") or a form in substantial compliance therewith must be prepared by the Plaintiff and presented to the Clerk at the time the complaint is filed. The Clerk will stamp the summons as issued and the Plaintiff shall serve the summons.

L. Rule 7010. FORM OF PLEADING.

(a). **Caption**

The caption of the adversary proceeding shall include the name of the debtor in the bankruptcy case in which the adversary proceeding is filed, and the main bankruptcy case number. It shall also indicate the chapter under which the main case is currently pending.

(b). **General Requirements of Form**

L. Rule 9004 is also applicable to Motions filed in adversary proceedings.

L. Rule 7015. AMENDED AND SUPPLEMENTAL PLEADINGS.

(a). **Form; Attachments**

Any motions to amend or to supplement pleadings must contain as an attachment a complete copy of the amended or supplemental pleading the movant proposes to file and the movant shall provide an additional copy of the proposed amended pleading which is receive-stamped and placed in the Clerk's case file.

(b). **Effective Date of Filing Supplements or Amendments**

The entry of the order authorizing leave to amend the pleading constitutes the filing date of the amended pleading.

L. Rule 7016. PRETRIAL PROCEDURES; FORMULATING ISSUES.

- (a). **Scheduling Order.** Following the filing of an answer or upon motion of a party, the Court shall issue its Scheduling Order, which will set forth deadlines, hearing dates, and limitations on discovery. Other pre-trial requirements are found in the Addendum to the Scheduling Order located in Appendix L-7016-a of these Rules. This Order may not be amended without permission of the Court, but an extension of the discovery deadline up until ten (10) days before the deadline for filing pre-trial orders will be deemed granted upon filing of a statement of consent signed by all parties.
- (b). **Motion Practice in Adversary Proceedings.** L. Rule 9013 applies to motion practice in adversary proceedings except that (i) the deadline for filing responses is reduced to ten (10) days except for motions under F.R.C.P. 12 and 56, which have a 20 day response period, and (ii) service of motions is limited to all counsel and *pro se* parties in the adversary proceeding. If a response is not timely filed, the relief requested may be granted without further notice and hearing.

Parties should use the following language to accomplish notice and an opportunity for hearing. The

form language should be presented conspicuously in the first paragraph of a pleading (or in a separate pleading denominated as notice), fully capitalized in bold faced type (at least 12 pt.). The language should specify twenty (20) days as the response period for motions under F.R.C.P. 12 and 56.

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN TEN (10) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

- (c). **Discovery.** Discovery conducted in adversary proceedings shall not be filed with the Clerk.
- (d). **Pre-Trial Conferences.** Unless otherwise provided in the Scheduling Order, a pretrial conference will not be held. A pretrial conference may be scheduled upon written Motion or upon the Court's own Motion, where deemed appropriate.
- (e). **Briefs.** Unless otherwise provided in the Scheduling Order, any legal briefs to be considered by the Court at the trial on the merits of an adversary complaint shall be filed contemporaneously with the Pretrial Order, but as a separate document, with service to opposing counsel.
- (f). **Exhibits and Number of Copies Required.**
 - 1. All exhibits that are to be used in a hearing on the merits shall bear an exhibit marker, and be bound in booklet form which will lay flat when opened. Exhibits shall be separately tabbed and identified by a numerical sequence, and shall be indexed at the front of each exhibit book or books.
 - 2. Plaintiff's (Movant's) exhibits shall be marked with the letter "P", followed by a dash, followed by a number; for example, Exhibit P-3. If there are multiple Plaintiffs, then each exhibit shall be marked with the letter "P", followed by the specific Plaintiffs name, followed by a dash, followed by a number; for example, Exhibit P Jones-3, Exhibit P Smith, Inc.-1. Defendant's (Respondent's) exhibits shall be marked with the letter "D", followed by a dash, followed by a number; for example, Exhibit D-2. If there are multiple Defendants, then the system for multiple Plaintiffs will apply. The letter "G" will in all cases be assigned to the government for identification purposes. The letter 'I' shall be used to designate the exhibits of any intervenor.
 - 3. Copies of the exhibits, bound, tabbed, and marked, shall be provided to each party not less than five (5) calendar days prior to trial.
 - 4. Exhibits shall not be filed with the Clerk prior to trial. Counsel will provide no fewer than five exhibit books at the time of trial: one each for the Judge, the Clerk, the witness stand, and one for each party's counsel. In the event there is more than one opposing party, additional exhibit books shall be furnished for each additional party.
 - 5. Failure to comply with the exhibit form and exchange requirements may result in the refusal of the Court to admit exhibits into evidence, or in sanctions.

L. Rule 7026. GENERAL PROVISIONS GOVERNING DISCOVERY.

- (a). The disclosures required by Fed. R. Civ. Proc. 26(a) shall be made at or within 10 days after entry of a scheduling order, unless otherwise ordered by the court.
- (b). A party may not seek discovery from any source until a scheduling order is entered by the court.

- (c). Fed. R. Civ. Proc. 26(f) requires that parties shall confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan. Parties may agree to waive this requirement and follow the terms and deadlines in the Scheduling Order and Addendum issued by the Court and found at Appendix 7016-a. If the parties do not agree to waive the provisions of Fed. R. Civ. Proc. 26(f), upon request the Court will schedule a pre-trial conference to discuss the provisions and deadlines of a scheduling order.

L. Rule 7041. DISMISSAL OF ADVERSARY PROCEEDINGS.

Applications to compromise and settle are governed by L. Rule 9019.

L. Rule 7054. CLAIMS FOR ATTORNEY'S FEES.

- (a). **Contents of Motions.** Any motion for an award of attorney's fees shall be filed and served no later than fourteen (14) days after entry of judgment pursuant to Rule 54 of the Federal Rules of Civil Procedure. L. Rule 7016(b) applies. Counsel for the parties shall confer for the purpose of resolving all disputed issues relating to attorney's fees prior to making application. The application shall certify that such a conference has occurred. If no agreement is reached, the applicant shall certify the specific reason(s) why the matter could not be resolved by agreement. The motion shall include a supporting document organized chronologically and by activity or project, listing attorney name, date, and hours expended on the particular activity or project. The application shall also set forth the method by which the amount of fees was computed, with sufficient citation of authority to permit the reviewing court the opportunity to determine whether such computation is correct. The request shall include reference to the statutory authorization or other authority for the request. Detailed time sheets for each attorney for whom fees are claimed may be required to be submitted upon further order of the Court. Nothing in this Rule prohibits the parties from requesting an award and presenting evidence related to the request at the time of the trial.
- (b). **Responses.** Objections to any motion for attorney's fees shall be filed on or before ten (10) days after the date of service of the motion. If there is no timely objection, the Court may grant the motion as unopposed.
- (c). **Hearing.** The motion shall be resolved without further hearing, unless an evidentiary hearing is requested, reasons therefor presented, and good cause shown.
- (d). **Waiver.** Motions for award of attorney's fees filed beyond the fourteen (14) day period may be deemed untimely and a waiver of entitlement to fees.

L. Rule 8011. MOTIONS PENDING DOCKETING OF THE APPEAL.

Except for motions which may be filed directly with the District Court pursuant to Bankruptcy Rule 8005, until an appeal is docketed by the District Clerk, all pleadings shall be filed with the Bankruptcy Clerk and acted upon by the Bankruptcy Judge.

L. Rule 9004. GENERAL REQUIREMENTS OF FORM

- (a). **Number of Copies.** Except as otherwise provided by applicable rules, whenever any pleading is offered for filing, the original and one (1) copy shall be tendered to the clerk.
- (b). **Caption.** All captions shall set forth the division where the case is pending (Austin, El Paso, Midland, San Antonio, or Waco) and the case number, including the initials of the Judge assigned to the case. Under the case number, the caption must include the Chapter of Title 11 under which the case is pending.
- (c). **Titles of Pleadings and Orders.** All pleadings and Orders shall, within the title, designate the specific relief sought or granted. Orders shall contain within the title a reference to the motion or application to be granted.
- (d). **Hole Punch Requirement.** All pleadings and other papers, including exhibits and Orders, offered for filing shall be pre-punched

at the top of the page to accommodate the Clerk's 2 3/4 inch center-to-center (2-hole punch) filing system.

- (e). **Non-conforming pleadings.** Any pleading that fails to conform to the requirements of this or any other applicable rule may be dismissed by the Court sua sponte.

L. Rule 9011. SIGNING OF PAPERS.

- (a). **Form of Signature.** All pleadings must be signed and shall include the signer's name, mailing address, email address, telephone and fax numbers including area code, and, if the signer is an attorney, the attorney's State Bar Number (and the state from which the bar number is issued, if other than Texas). The Court may waive the requirement of a physical, original signature to implement alternative filing methodologies.
- (b). **Oral representations, motions, applications, and other requests for relief.** For purposes of L. Rule 9011, an oral representation, motion, application, or other request for relief is deemed signed when it is made in open Court.

L. Rule 9013. MOTIONS; FORM AND SERVICE.

- (a). **Format of motions, applications, and other requests for relief.**

Motions, applications, objections to claim and other requests for relief filed in a bankruptcy case or adversary proceeding shall comply with L. Rules 9004 and 9011 and shall be accompanied by a proposed form of order. Motions filed within an adversary proceeding are also governed by L. Rule 7016.

- (b). **Responses to motions, applications, and objections to claims.**

1. **Time of filing.** A party who opposes the relief requested must file a responsive pleading within the time set out in the required notice (if applicable). If negative notice language is not used, a response is not required.

2. **Format.** Responses to motions, applications, and other requests for relief shall comply with L. Rule 9004, except that no proposed form of order is required. Responses shall also comply with L. Rule 9011.

- (c). **Matters granted without hearing.** The court may rule immediately, without further notice or hearing, on certain matters including the following:

1. motions for admission *pro hac vice*, pursuant to L. Rule 1001(e);
2. motions to shorten notice pursuant to National Rule 2002;
3. motions to employ professionals pursuant to L. Rule 2014;
4. motions to enlarge time pursuant to National Rule 9006;
5. motions to expedite hearings pursuant to L. Rule 9013(d);
6. motions for new trial pursuant to National Rule 9023;
7. motions for reconsideration pursuant to National Rule 9024; and
8. motions for continuance.

- (d). **Expedited hearing or consideration.**

4. Except as otherwise provided by standing order, a motion for expedited hearing with regard to a matter, or to expedite consideration of any matter, shall be filed as a separate pleading. Such motions shall comply with L. Rule 9013(a). Such motions may be granted only for good cause stated on the face of the pleading.
5. The proposed form of order accompanying such a motion shall contain a paragraph in substantially the following format (including blanks):

“The [name of underlying pleading] is scheduled for expedited hearing on the ____ day of _____,

_____, at _____ m., in [name and address of court, including courtroom if applicable]. Notice of the hearing shall be given by movant/applicant.”

6. The moving party shall file a certificate signed by the party or the party’s attorney reflecting the date and method of notice with the Clerk within five (5) days of such service.

(e). Continuances.

1. **Time for filing.** No continuance of any hearing will be granted except upon motion filed no later than three (3) calendar days prior to the scheduled hearing and upon good cause shown on the face of the pleading. The court may consider such a motion filed less than three (3) calendar days prior, but only if the motion sets forth the emergency that explains why it was not timely filed.
2. **No agreed continuances.** The agreement of the parties to a continuance is not, of itself, good cause for granting a continuance.
3. **Appearance required.** Unless the court grants the motion prior to the hearing, the parties are required to appear at the scheduled hearing. The filing of a motion for continuance of itself does not excuse appearance.
4. **Certificate.** The moving party shall file a certificate signed by the party or the party’s attorney reflecting the date of any hearing reset by the Court, and reflecting service of notice that reset hearing, within five (5) days of such service.

(f). Certificates of service

All motions, applications and objections to claims, and all responses to same must contain a certificate of service reflecting service on affected entities, as specified in paragraph (g) of this Local Rule.

1. The certificate of service must be signed by an attorney or party (if appearing *pro se*), certifying that service has been accomplished in the manner and on the date stated in the certificate.
2. The certificate of service must list each of the entities served (including their mailing addresses and affiliation with the case or proceeding).
3. With court approval, a party may serve a summary of a pleading where the pleading is voluminous, or the number of parties to be served is excessively large. In such cases, the summary shall be filed, and the certificate of service shall be appended to the summary.

(g). Entities to be served.

1. When a pleading is filed, the following entities at a minimum shall be served, unless otherwise specifically provided by these rules or by standing order.
 - A. In a chapter 7 case: the debtor, the appointed trustee, any court-approved committees, the counsel for each of the foregoing entities, and any other entities affected by the relief requested.
 - B. In a chapter 11 case: the debtor, any court-approved committee, any chapter 11 trustee, the counsel for each of the foregoing entities, the twenty largest unsecured creditors, parties who have filed a notice of appearance, the United States Trustee, and any other entities affected by the relief requested.
 - C. In a Chapter 12 or 13 case: the debtor, the standing trustee, the ten largest unsecured creditors, and any other entities affected by the relief requested.
 - D. In an adversary proceeding: upon all counsel or pro se parties in the adversary proceeding.

2. Whenever a pleading governed by this Local Rule is to be served on the United States, or an officer or agency thereof, the service provisions of National Rule 7004(b)(4) apply.
3. If a movant wishes to use the negative notice language of L. Rule 9014(a), the following motions require service upon all creditors and parties in interest:
 - A. motions to dismiss in chapters 7, 9, and 11;
 - B. motions to modify plans chapters 11, 12, and 13; and
 - C. motions to incur debt in chapters 11, 12, and 13.

L. Rule 9014. CONTESTED MATTERS.

(a). Negative Notice Language

Notice and an opportunity for hearing may be accomplished by the inclusion of the following form language presented conspicuously, fully capitalized in bold faced type (at least 12 pt.) and placed immediately below the caption and before the body of the pleading. This language should not be used for (1) matters granted without a hearing as set forth in L. Rule 9013(c), (2) matters set forth in Appendix L-9014, (3) matters upon which a hearing is specifically required by the Bankruptcy Code or by applicable rules, or (4) matters that require the Court to act within a shortened time frame.

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY (20) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

Comment to 9014(a): This rule is designed to save hearing time and costs. If a party desires that a hearing be held on a matter, it should not include the twenty-day negative notice language specified in the rule. The language should also not be used on (1) routine administrative matters, such as motions to waive pay orders, or (2) matters which require the court to act within a shorter period of time than twenty days (such as motions to extend the time for filing schedules or the Chapter 13 plan or plan summary). In these cases, the court will act on the moving papers, await responses, or set the matter for hearing, as it deems appropriate.

- (b). Hearings.** If a matter requires hearing, notice of the setting shall be accomplished by the Clerk
- (c). Exhibits For Hearings in Contested Matters.** L. Rule 7016(f) applies to all exhibits proposed to be introduced at hearings in contested matters.
- (d).** National Bankruptcy Rule 7015, to the extent that it adopts F.R.C.P. 15(c) applies to contested matters.
- (e).** National Bankruptcy Rule 7026 does not apply in contested matters, unless the court orders otherwise.

L. Rule 9015. JURY TRIAL PROCEDURES.

(a). Consent to Jury Trial Before Bankruptcy Court.

1. **By the Party Demanding Jury Trial.** If a jury trial is requested in a matter pending before the Bankruptcy Court, the requesting party shall file with the Court, as part of the jury demand, a separate pleading entitled "Statement Regarding Consent", setting forth the following:
 - A. whether the requesting party consents to the conduct of the jury trial by the Bankruptcy Court;

- B. whether the matter is one to which the Seventh Amendment right to jury trial attaches, and the grounds therefor;
 - C. whether the matter is a core or non-core proceeding, and the grounds therefor; and
 - D. if the matter is a non-core proceeding, whether the party consents to the entry of a final order by the Bankruptcy Court.
2. **By the Parties to the Litigation in Response to a Jury Demand.** Within fifteen (15) days after the filing of a jury demand and the Statement Regarding Consent required under paragraph (a)(1) of this Rule, each party to the litigation shall file a "Response Regarding Consent", addressing each of the four matters referenced above.

(b). Withdrawal of the Reference in the Event of Non-consent

If the Court grants the jury demand and a party has refused to consent to the Bankruptcy Court's conduct of the jury trial, then any party may, within fifteen (15) days, file a motion to withdraw the reference, attaching a copy of the Court's order and a copy of the party's refusal to consent. If no party timely files such a motion, the court shall strike the jury demand.

(c). Application of the District Court Local Rules Relating to Jury Trials

All rules relating to the conduct of a jury trial in the District Court shall apply to the conduct of such trials in Bankruptcy Court.

COMMENT:

By general order, the District Court for this district has expressly authorized the bankruptcy judges of this district to conduct jury trials to the extent otherwise permitted by law. Consent is required pursuant to 28 U.S.C. § 157(e). This rule addresses procedures for obtaining the required consent, and the procedure to be followed in the event consent is not obtained. The rule also addresses the related issue of consent to the entry of a final order in non-core proceedings, as consent to the conduct of a jury trial coupled with the failure to consent to the Bankruptcy Court's entry of a final order in such proceedings might contravene the Seventh Amendment.

L.Rule 9018. SECRET OR CONFIDENTIAL MATTERS.

(a). Filing

- 1. Documents or proceedings may be sealed only by order of the court, and on motion with notice to parties in interest.
- 2. Documents to be sealed shall be presented to the Clerk after the order has been entered. The documents shall be contained in an envelope or other secure device, with the initials or signature of the submitting party or attorney written across the edge of the closure, and transparent tape placed on top of the mark for security. The envelope (or other secure device) shall have affixed to it a letter-size sheet of paper bearing the style and caption of the matter with reference to which the documents are being filed.
- 3. The form of order submitted with the motion requesting a matter be sealed shall contain the following recitations:
 - D. The matter shall remain under seal for no longer than one year from the date of entry of the order, unless the court orders otherwise.
 - E. The only entities permitted to review documents or transcripts of proceedings placed under seal are those entities specified in the order, except that the following entities shall also have access to matters placed under seal unless the court specifically rules otherwise: (1) the judge presiding over the case, (2) the law clerk to whom the matter is assigned internally by the presiding judge, (3) the courtroom deputy responsible for the matter, (4) the Clerk of the Court, and (5) the presiding judge and staff of any appellate tribunal.

(b). Disposition of sealed documents

1. Documents or transcripts of proceedings under seal may be forwarded to an appellate court without the necessity of unsealing the matter. The matter so forwarded shall be accompanied by a true copy of the order placing the matter under seal. Further motions with regard to the sealing or unsealing of a matter shall be filed with the court which entered the original order sealing the matter, notwithstanding the pendency of an appeal.
2. Upon the entry of an order unsealing a matter (or upon the expiration of the time period specified in paragraph a(2)(a), *supra*), the clerk (or other person responsible for the maintenance of the matter) shall place the document or transcript of proceedings in the file of the case or adversary proceeding.

L. Rule 9019. COMPROMISE.

(a). Filing

1. An application to compromise an adversary proceeding shall be filed in the main bankruptcy case, not in the adversary proceeding. It shall bear the style of the main bankruptcy case, not the adversary proceeding.
2. An application to compromise an adversary proceeding shall, within the body of the application, set out the style and number of the adversary proceeding.
3. No application to compromise an adversary proceeding need be filed in order to settle a nondischargeability action filed pursuant to Section 523.

(b). Notice

1. Applications to compromise adversary proceedings are governed by L. Rule 9014, and may include the negative notice language there specified.
2. Applications to compromise and motions to dismiss an objection to discharge under Section 727 must identify the cause of action and any consideration paid or agreed to be paid.

(c). Order and Judgment

An application to compromise an adversary proceeding shall be accompanied by two forms of order. The first form of order shall be one to approve the application to compromise, bearing the style of the main bankruptcy case. The second form of order shall be a proposed agreed judgment or order of dismissal, bearing the style of the adversary proceeding, for entry in the underlying adversary proceeding.

L. Rule 9022. AGREED ORDERS OR AGREED JUDGMENTS

Order Submission Form. Agreed Orders submitted prior or subsequent to the scheduled hearing must have a cover sheet in conformity with the standard form attached as Appendix L-9022.

L. Rule 9027. REMOVAL.

- (a). Abstention.** A motion to abstain is filed with the Clerk of the Bankruptcy Court.

(b). Removal.

1. **Filing.** A notice of removal pursuant to 28 U.S.C. § 1452(a) shall be filed with the Clerk of the Bankruptcy Court. A notice of removal grounded on other federal provisions (i.e., diversity) shall be filed with the Clerk of the District Court.
2. **Attachments.** A notice of removal pursuant to 28 U.S.C. § 1452(a) shall include a copy of the docket sheet, and all pleadings, orders, and writs.
3. **Motion for Remand; Time for Filing.** Any motion for remand must be filed no later than thirty (30) days after the date of filing of the notice of removal.

COMMENT:

28 U.S.C. § 1334(c) provides that motions for abstention are decided by the District Court. The local rule clarifies that such matters are included within the general order of reference and are decided in the first instance by the Bankruptcy Court.

28 U.S.C. § 1452(a) is not the exclusive ground for removal to federal court. A removal premised on any other provision of Title 28 is filed in the District Court, not the Bankruptcy Court.

DISTRICT COURT STANDING ORDERS OF REFERENCE

#1	ORDER OF REFERENCE OF BANKRUPTCY CASES AND PROCEEDINGS NUNC PRO TUNC	08/13/84
#2	GENERAL ORDER REGARDING REMOVALS OF BANKRUPTCY RELATED PROCEEDINGS FROM STATE COURT	06/27/86

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

ORDER OF REFERENCE OF BANKRUPTCY CASES
AND PROCEEDINGS NUNC PRO TUNC

WHEREAS, prior to the enactment of Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353, Title 28, United States Code, Section 157, the Clerk of the Western District of Texas, pursuant to the authorization from the Judicial Conference of the United States, appointed Bert W. Thompson and Joseph C. Elliott as consultants, pursuant to the provisions of Title 28, United States Code, Section 751, and under Title 5, United States Code, Section 3109, to advise the United States District Court on matters until July 27, 1984, and thereafter until August 27, 1984; and

WHEREAS, pursuant to such appointment said consultants have submitted numerous proposals, each of which have been approved and ordered carried out by Judges of the United States District Court; and

WHEREAS, it is the desire of this Court and of the consultants, that an order of reference of bankruptcy cases and proceedings should be entered pursuant to the Bankruptcy Amendments and Federal Judgeship Act of 1984, Title 28, United States Code, Section 157, it is hereby

ORDERED nunc pro tunc as of June 27, 1984, that any and all cases under Title 11 of the United States Code, and any or all proceedings arising under Title 11, United States Code, or arising in or related to a case under Title 11, United States Code, which were pending in the Bankruptcy Court of the Western District of Texas on June 27, 1984, which have been filed in this district since that date and which may be filed herein hereafter (except those cases and proceedings now pending on appeal) be and they are hereby referred to the Bankruptcy Judges of this district for consideration and resolution consistent with law.

It is further ORDERED that the Bankruptcy Judges for the Western District of Texas be, and they are hereby directed to exercise the authority and responsibilities conferred upon them as Bankruptcy Judges by the Bankruptcy Amendments and Federal Judgeship Act of 1984 and this Court's order of reference, as to all cases and proceedings covered by this order from and after June 27, 1984.

In accordance with Title 28, United States Code, Section 157(b)(5), it is further ORDERED that all personal injury tort and wrongful death claims arising in or related to a case under Title 11, United States Code, pending in this Court shall be tried in, or as determined by, this Court and shall not be referred by this order.

SO ORDERED this 13th day of August, 1984, at 8:00 a.m. by WILLIAM S. SESSIONS, CHIEF UNITED STATES DISTRICT JUDGE AS AUTHORIZED BY THE UNANIMOUS VOTE OF THE JUDGES OF THE COURT.

Filed August 13, 1984.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

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§

GENERAL ORDER REGARDING REMOVALS

OF BANKRUPTCY RELATED PROCEEDINGS FROM STATE COURT

Title 28, United States Code §1452 provides that a party may remove any claim or cause of action in a civil action related to bankruptcy cases other than a proceeding before the United States Tax Court, or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power to the district court in the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under §1334 of Title 28. This court has required that all bankruptcy related matters removed from a state court be filed in the U. S. District Court Clerk's office and assigned to a U. S. District Judge. After filing, these cases have been referred to the bankruptcy judges of this district. Since the bankruptcy court is a unit of the district court and in the interest of justice and economy,

IT IS ORDERED that effective immediately, removal of claims related to bankruptcy cases shall be filed in the bankruptcy unit of the district court as adversary proceedings and assigned directly to a bankruptcy judge of this district.

IT IS FURTHER ORDERED that the bankruptcy judge to whom the case is assigned shall make a determination whether the proceedings are core or non-core proceedings and upon conclusion, to either enter a final order or enter recommended findings to be submitted to the district court for review.

SIGNED and ENTERED this the 27th day of June, 1986 at 8:45 a.m. by WILLIAM S. SESSIONS, CHIEF
JUDGE.

Filed June 27, 1986.

ALTERNATIVE DISPUTE RESOLUTION

It is the intent of the Court to facilitate the use of alternative dispute resolution (“ADR”) in all matters, including specifically contested matters and adversary proceedings, to the extent practicable, helpful and appropriate.

(a) ADR REPORT.

Upon order of the Court entered in any contested matter or adversary proceeding, the Debtor and/or Trustee, and all parties (as well as all parties-in-interest affected thereby, including official Committees(s)) shall submit a report addressing the status of settlement negotiations, disclosing the identity of the person responsible for settlement negotiations for each party, and truthfully, candidly and realistically evaluating whether alternative dispute resolution is appropriate in the contested matter or adversary proceeding. Counsel shall certify in the report that their clients have been informed of the ADR procedures available in this district. In the event the parties conclude that ADR is appropriate and agree upon a method of ADR and a neutral, they should identify both the method of ADR and the neutral they have selected, the method by which the neutral was selected, and how the neutral will be compensated. If the parties agree upon an ADR method and neutral, the Court will defer to the parties' agreement, unless the Court finds that another ADR method or neutral is better suited to the contested matter, adversary proceeding or the parties.

(b) REFERRAL TO ADR.

The Court on its own motion or upon the motion of any party or party-in-interest may order the participation in a non-binding alternative dispute resolution proceeding, including non-binding arbitration, early neutral evaluation, mediation, or mini-trial in accordance with Local Rule 1001(i). The order may further direct the parties to bear all expenses relating to alternative dispute resolution proceedings in such proportions as the Court finds appropriate, and may direct that portions thereof be allowed as an administrative expense entitled to priority in the case, but in no event should apportioning of costs constitute a penalty for failing to arrive at a settlement. The alternative dispute resolution proceeding shall begin at a date and time selected by the parties, subject to the schedule of the neutral or neutrals, but in no event later than forty-five (45) days after the entry of the order compelling participation in the proceeding.

(c) ATTENDANCE.

Party representatives with authority to negotiate a settlement and all other persons necessary to negotiate a settlement must attend and participate in good faith in the alternative dispute proceeding, subject to the Court's power to assess appropriate sanctions.

(d) SELECTION OF NEUTRAL.

Upon entry of an order compelling participation in alternative dispute resolution, or upon agreement of the parties where they have not selected a neutral or neutrals from the roster, the Clerk shall forthwith furnish to each party a list of neutrals. If the compelled procedure is non-binding arbitration or moderated settlement conference, the list shall include five neutrals whose names have been selected from the roster of arbitrators maintained in the District Clerk's Office. If the compelled procedure is other than non-binding arbitration or moderated settlement conference the list shall include three neutrals selected from general neutral roster. The parties shall then confer with each side entitled to strike one name from the three neutral list (two names from the five neutrals list). The person remaining shall be designated the neutral. The parties may by agreement reject the list furnished by the Clerk and instead unanimously select a neutral or neutrals from either roster. Failure of counsel to timely notify the Clerk of their strikes or selection shall result in the selection of the neutral or neutrals by the Clerk. The Clerk shall promptly notify the neutral or neutrals selected. If any person selected is unable or unwilling to serve the Clerk shall submit an additional list of names to the parties until a neutral or complete panel of neutrals is selected. When a neutral or full panel of neutrals have been selected and have agreed to serve, the Clerk shall promptly notify the neutral or neutrals and the parties of the selection. No person shall serve as a neutral if any of the circumstances specified in 28 U.S.C. § 455 of the Judicial Code of Conduct exist, or if the neutral believes in good faith that such circumstances exist. Any person whose name appears on the roster maintained in the Clerk's Office may ask at any time to have his or her name removed, or, if selected to serve in any case, decline to serve but remain on the roster.

Upon its own motion or upon motion and showing of good cause by any party, the Court may order appointment of a neutral or neutrals from outside the roster of qualified neutrals maintained by the Clerk's Office.

(e) CONFIDENTIALITY.

Except as otherwise provided herein, a communication relating to the subject matter of any case under Title 11, contested matter or adversary proceeding made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(1) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party neutral(s) facilitating the procedure may not testify, or be required to testify, in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring the disclosure of confidential information or data relating to or arising out of the matter in dispute.

(2) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is only admissible or discoverable if it is admissible or discoverable independent of the procedure.

(3) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to any Court having jurisdiction of the proceedings to determine, *in camera*, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the Court or whether the communications or materials are subject to disclosure.

(f) SUMMARY TRIAL OR JURY TRIAL.

In cases where other alternative dispute resolution procedures have proved unsuccessful and a complex and lengthy trial is anticipated, the Court may conduct a summary trial or jury trial, *provided* that the Court finds that a summary trial or jury trial may produce settlement of all or a significant part of the issues and thereby effect a saving in time, effort and expense for all concerned. The Court should develop procedures, which may include referral to one or more neutrals on the roster of arbitrators (for report and recommendation), for such summary trial or jury trial with the advice of counsel.

7. REPORT.

At the conclusion of each ADR proceeding, the neutral or panel of neutrals shall submit to the Court a notice of outcome, including the style and number of the case, the date(s) of the ADR proceeding, the names of the participants and only whether the case has settled or not.

(h) SANCTIONS.

All sanctions available under Federal Rule of Civil Procedure 16(f), Federal Rule of Bankruptcy Procedure 7016 and/or any Local Rule or previous Order of the Court shall apply to any violation of this rule.

A. COURT AUTHORIZATION NOT REQUIRED.

Nothing in this rule should be interpreted as limiting parties' ability to agree to a form of alternative dispute resolution or the selection of a neutral without a court order, through mutual consent. In fact, consent is preferred.

GOVERNMENT ENTITIES ADDRESS LIST

Addresses for notice to major agencies of the United States government are as follows:

1. Small Business Administration (SBA)
 - a. San Antonio, Austin, Del Rio Division cases:

SBA
7400 Blanco Road, Suite 200
San Antonio, Texas 78216
 - b. Waco Division:

SBA
1100 Commerce Street, Rm. 3C36
Dallas, Texas 75242
 - c. El Paso and Pecos Divisions:

SBA
10737 Gateway West, Suite 320
El Paso, Texas 79935
 - d. Midland Division:

SBA
1611 - 10th Street, Suite 200
Lubbock, Texas 79401
2. Veterans Administration (VA)
 - a. San Antonio and Del Rio Divisions:

VA Regional Office
Office of District Counsel
2515 Murworth Drive
Houston, Texas 77054
 - b. Waco, Austin, El Paso, Midland and Pecos Divisions:

VA Regional Office
Office of District Counsel (02)
1400 N. Valley Mills Drive
Waco, Texas 76799

3. Department of Housing and Urban Development (HUD;FHA)

a. San Antonio, Austin, Del Rio Divisions

HUD
800 Dolorosa Street
San Antonio, Texas 78207-4563

b. El Paso, Waco, Pecos and Midland Divisions

HUD
P.O. Box 2905
Ft. Worth, Texas 76113-2905

4. Department of Agriculture

a. Farmers Home Administration (FHA) - all Divisions:

FmHA
101 South Main, Suite 102
Temple, Texas 76501

b. Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC) - all Divisions:

Texas State ASCS/CCC
P.O. Box 2900
College Station, Texas 77841

5. Internal Revenue Service (IRS)

a. San Antonio, Waco, El Paso, Pecos, Austin and Del Rio Divisions:

Internal Revenue Service
Special Procedures Staff
Stop 5022 AUS
300 E. 8th Street
Austin, Texas 78701

b. Midland Division

Internal Revenue Service
Special Procedures Staff
1100 Commerce Street, Stop 5020 DAL
Dallas, Texas 75242

6. United States Department of Justice - All Divisions:

United States Attorney/[designate creditor agency if other than Department of Justice]
601 N. W. Loop 410, Suite 600
San Antonio, Texas 78216

Attorney General of the United States
Main Justice Building, Room 5111
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

a. For San Antonio, El Paso and Midland cases:

United States Trustee
615 E. Houston, Suite 533
San Antonio, Texas 78205

P.O. Box 1539
San Antonio, Texas 78295-1539

b. For Austin and Waco cases:

United States Trustee
903 San Jacinto, Suite 230
Austin, Texas 78701

7. State Taxing Authorities

State Comptroller of Public Accounts
Revenue Accounting Division - Bankruptcy Section
P.O. Box 13528
Austin, Texas 78711

Texas Employment Commission
TEC Building - Bankruptcy
101 East 15th Street
Austin, Texas 78778

Texas Alcohol Beverage Commission
Licenses and Permits Division
P. O. Box 13127
Austin, Texas 78711-3127

(STYLE)

NOTICE OF EMPLOYMENT OF PROFESSIONAL

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY (20) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED IN THE MOTION MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

Name of client:

Identity of professional: (Name, address, phone)

Nature of profession: (Attorney, accountant)

Conflicts: None or specify

Retainer:

Proposed compensation: (e.g. hourly rates (specified), flat fee, contingency fee)

List of other professionals in case:

Signed: (professional)

(Case No.)

(Case Name)

(Hearing Date, if known)

FEE APPLICATION SUMMARY

I. CLIENT - (Name of party represented)

Example: DIP, Bankruptcy Estate

II REQUESTING APPLICANT/FIRM - (Give attorney/accountant name and nature of representation.)

Example: Collier & Norton, attorneys for the Debtor, on behalf of Penny & Dollar, court-approved CPA.

III. TOTAL AMOUNT OF FEES REQUESTED -

a. Fees: \$

b. Expenses: \$

c. Pre-petition retainer, if any: \$; (of this amount, \$ has previously been offset pursuant to prior fee applications)

d. Time period covered: to

IV. BREAKOUT OF CURRENT APPLICATION

NAME/CAPACITY	TOTAL HOURS	RATE	TOTAL FEE
(Collier, Atty.	20.00	\$100.00	\$2,000.00)
(Norton, Paralegal	<u>10.00</u>	35.00	<u>350.00)</u>
	30.00		\$2,350.00

MINIMUM FEE INCREMENTS - (Give minimum fee increment. Explain fully fee increments other than. 1 or any other flat or unusual rates).

EXPENSES - (Give total amounts requested for expenses and specifically charge for photocopy and any in-house services such as delivery fees).

AMOUNT ALLOCATED FOR PREPARATION OF THIS FEE APPLICATION: \$

V. PRIOR APPLICATIONS:

Date of hearing (e.g., 1/5/87)	Amount requested	Amount authorized
	\$2,510.00	* \$2,400.00)

* (Explain if any of the previous authorized amounts still remain to be paid.)

VI. OTHER CO-EQUAL OR ADMINISTRATIVE CLAIMANTS IN THIS CASE:

<u>Name</u>	<u>Party Represented</u>
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Explain whether allowance of your Application will or will not result in this estate not being able to pay all co-equal or superior administrative claims in this case.

VII. RESULT OBTAINED -

For the time period covered by this Application, briefly identify the various matters for which services were rendered. For each identified matter, summarize the work performed and estimate the amount of fees allocated to such work during the time period in question. This estimate need not be exactly accurate, however the total of estimated fees must equal the amount of fees sought in this Application.

VIII. If this Application in excess of the rates disclosed hereafter, explain for each effected employee the following:

- a. number of years of experience;
- b. if Debtor's counsel:
 - (1) number of confirmed Chapter 11 Plans obtained if less than 10;
 - (2) special factors justifying higher rate in this case;
- c. if creditor's counsel:
 - (1) number of adversary proceedings litigated to judgment if under 10;
 - (2) number of claims involving more than \$500,000.00 in amount; and
 - (3) special factors justifying the fee in this case.

This Court believes all fees should be reasonable and necessary to justify their approval for payment out of the funds of the estate prior to payment of allowed unsecured creditors. The rates currently found in this District which are reasonable, if all other facts substantiate them as reasonable and necessary, for experienced practitioners in relatively significant Chapter 11 cases in this District are:

attorneys - \$175.00 per hour; legal assistants - \$50.00 per hour; law clerks - \$40.00 per hour.

THESE FEES ARE GUIDELINES ONLY AND DO NOT PRECLUDE EVIDENCE JUSTIFYING HIGHER OR LOWER RATES.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:

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CASE NO.

DEBTOR(S)

BALLOT SUMMARY FOR (PLAN PROPONENT'S NAME)
PLAN OF REORGANIZATION

BALLOT SUMMARY (BY CLAIM)

<u>NAME</u> (alphabetized)	<u>CLASS</u> (per plan)	<u>ALLOWED CLAIM</u> p/c sched ct ord Sec 502(c)				<u>VOTE</u>

BALLOT SUMMARY (BY CLASS)

<u>CLASS</u>	<u>TOTAL #</u>	<u>TOTAL AMOUNT</u>	<u>TOTAL = (Y) / (N)</u> (YES) (NO)	<u>TOTAL AMNT</u> <u>(Y) / (N)</u> (YES) (NO)	<u>CLASS</u> VOTE
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ADDENDUM TO SCHEDULING ORDER

Issue having been joined, it is hereby **ORDERED**:

1. Counsel residing outside the State of Texas shall designate local counsel in writing, giving the

street address, telephone number and mailing address. The designation shall be filed with the Clerk of the Court in this proceeding, and a copy shall be sent to all other counsel of record in this proceeding. This provision may be waived by the Court upon motion of counsel and service upon other parties.

2. **ALL DISCOVERY MUST BE COMMENCED AND COMPLETED BY THE DISCOVERY DEADLINE PROVIDED IN THIS ORDER.**

- a. Designation of experts shall be an issue at any pretrial conference.
- b. Counsel are encouraged to resolve discovery disputes by agreement. Motions to compel, motions for protective orders and similar motions, while not prohibited, may result in sanctions being imposed on the losing party or both parties as provided in Fed. R. Bankr. P. 7037 & 9011 or 28 U.S.C. section 1927, if a hearing is required thereon.
- c. If applicable, parties may file dispositive motions under Fed. R. Bankr. P. 7012 & 7056 and Fed. R. Civ. P. 12(b) & 56. Such motions, if filed, must be filed by the deadline for dispositive motions in this Order. Responses to motions under FRBP 12 and 56 must be filed within 20 days after the Motion is filed. **ALL OTHER MOTIONS IN THIS ADVERSARY PROCEEDING, UNLESS UNOPPOSED, REQUIRE THE FILING OF A WRITTEN RESPONSE WITHIN 10 DAYS, OR THE MOTION MAY BE GRANTED WITHOUT A HEARING.**
- d. All discovery shall be commenced at a time which allows for the full response time provided by applicable rules on or before the discovery deadline.

E.g., if the discovery deadline is July 15, interrogatories must be actually delivered on or before June 15 in order to allow thirty days for answers. If the interrogatories are mailed, then they must be mailed on or before June 12, pursuant to FED. R. BANKR. P. 9006(f), to allow three additional days for service by mail.

- e. The Court may, upon motion and for cause shown, extend, reduce, or otherwise modify the deadlines set out in the Scheduling Order. Mere agreement of the parties to such extensions or modifications is not of itself sufficient cause.
3. An original and one copy of the Pre-Trial Order must be filed on or before the Pre-Trial Order deadline provided in this Order. If the Pre-Trial Order is not timely filed, a default judgment may be rendered or the proceeding may be dismissed for want of prosecution. Counsel may agree on a single Pre-Trial Order; however, if counsel cannot agree, counsel must file separate proposed Pre-Trial Orders on or before the deadline. The proposed Pre-Trial Order shall contain the following:
- a. A short and concise statement of the nature of the dispute.
 - b. A statement as to jurisdiction, including whether the matter is core or non-core, and if non-core, whether the parties consent to the entry of a final order by the bankruptcy judge.
 - c. A summary of the agreed facts.
 - d. A summary of the agreed applicable law.
 - e. A summary of the disputed factual issues.
 - f. A summary of the disputed legal issues. Such summary shall include a discussion of laws involved by specific reference to code provisions, state or federal statutes and/or regulations, applicable rules of procedure and conflict questions, if any. (Copies of regulations must be attached.)
 - g. A list of witnesses who may be called, accompanied by a short and concise statement of their proposed testimony.
 - h. A numbered list of exhibits upon which the parties intend to rely at trial.
 - i. An estimate of the length of time required to hear the complete trial on the merits.
 - j. A certificate that a conference of counsel has been held regarding settlement, stipulations of agreed facts, and simplification of the issues.

4. Counsel and unrepresented parties must confer prior to the date the Pre-Trial Order is required to be filed, to fully explore the possibility of settlement, to stipulate to matters not in dispute and to simplify the issues. The Pre-Trial Order shall contain a certificate to the effect that the conference of counsel has been held. Counsel must also confer in an effort to determine whether the original time estimate for trial is correct or should be revised. If the parties wish to have a pre-trial conference with the Court, a pre-trial conference should be requested as early as possible, but at least 60 days prior to the trial. No pre-trial conference will be scheduled with the Court unless absolutely necessary, except as follows:

IF COUNSEL'S ESTIMATE OF TRIAL TIME IS 5 HOURS OR MORE, A PRE-TRIAL CONFERENCE MUST BE REQUESTED. IT WILL BE THE PARTIES' BURDEN TO MAKE WRITTEN REQUEST FOR THE PRE-TRIAL CONFERENCE IN SUCH INSTANCE, WITHIN 30 DAYS AFTER THE DATE OF THIS ORDER. DESIGNATION OF EXPERTS SHALL BE AN ISSUE AT ANY PRE-TRIAL CONFERENCE.

IF A JURY DEMAND IS FILED BY ANY PARTY TO THE PROCEEDING, THAT PARTY MUST FILE A WRITTEN REQUEST (WITH SERVICE UPON ALL OTHER PARTIES) FOR A PRE-TRIAL CONFERENCE WITHIN 30 DAYS OF THE DATE OF THE FILING OF THE JURY DEMAND, OR WITHIN 30 DAYS OF THE DATE OF THIS ORDER, WHICHEVER IS LATER, OR THE JURY DEMAND WILL BE WAIVED. THIS WRITTEN REQUEST FOR PRE-TRIAL CONFERENCE MUST BE ACCOMPANIED BY A BRIEF ADDRESSING THE FOLLOWING ISSUES :

- (1) Whether the matter or matters are core or non-core proceedings;
 - (2) Whether the party consents to the conduct of a jury trial by the bankruptcy judge or, if not, whether the party has filed a motion to withdraw the reference;
 - (3) Whether the party is entitled to a jury trial under applicable law.
5. Any legal briefs to be considered by the Court at the trial of this proceeding must be submitted at the same time and in the same manner as the Pre-Trial Order and must be separately bound.
 6. Trial exhibits (other than rebuttal, demonstrative and physical exhibits) shall be bound at the side, in book form, separated by tabbed dividers with a cover sheet listing the exhibits. Each exhibit shall bear a standard exhibit label on the bottom of the first page of the exhibit identified.- Exhibits shall be exchanged not later than 5 calendar days prior to docket call. See Bankruptcy Local Rule 7016(g)(3).

7. **DOCKET CALL IS SET ON THE DOCKET CALL DATE PROVIDED IN THE SCHEDULING ORDER.**

The only matters to be considered by the Court at docket call are as follows:

- a. Date, time and place of trial following docket call.
- b. Properly and timely-filed motions for continuance or for default judgment.
- c. Motions not previously ruled on under FED. R. CIV. P. 12 and FED. R. BANKR. P. 7012.
- d. Settlement announcements.

FAILURE TO ATTEND DOCKET CALL MAY RESULT IN DISMISSAL OR RENDITION OF FINAL JUDGMENT. YOU MAY, HOWEVER, AUTHORIZE ANY MEMBER OF THE BAR OF THIS COURT, INCLUDING OPPOSING COUNSEL, TO MAKE AN APPEARANCE ON YOUR BEHALF AT DOCKET CALL, IF THERE ARE NO CONTESTED MOTIONS FOR CONTINUANCE, MOTIONS FOR DEFAULT JUDGMENT OR MOTIONS UNDER FED. R. CIV. P. 12 AND FED. R. BANKR. P. 7012.

MATTERS DEEMED CONTESTED

Hearings must be held on the following matters:

1. Reaffirmation Agreements.- (if court deems necessary to set)
2. Disclosure statement and confirmation proceedings under Chapters 9, 11 and 12.
3. Adversary proceedings generally, except as provided in Local District Rules or the Bankruptcy Rules.
4. Motions for contempt or sanctions, including Motions under Rule 9011.
5. Objections to confirmation in Chapters 9, 11, 12, & 13.
6. Motions to appoint a Trustee or examiner in Chapter 11 cases.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION

ORDER SUBMISSION FORM

(For a Proposed Order Unaccompanied by a Motion)

RE:

CASE NUMBER:
(CHAPTER ____)
ADVERSARY NO:

ORDER SUBMITTED AFTER HEARING (Whether agreed or pursuant to Court's request)

Docket Call/Hearing Held On _____
Before Judge _____

AGREED ORDER SUBMITTED PRIOR TO SCHEDULED HEARING Docket
Call/Hearing Scheduled For _____

Before Judge _____

AGREED ORDER SUBMITTED AFTER A MOTION HAS BEEN FILED (No hearing
date set)

NOTE: When the Order has been signed by the Judge please forward a copy to:

_____, Attorney For Debtor

Telephone No. _____